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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Adversary Pro. No. 08-01789-brl

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In the Matter of:

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

v.

Bernard L. Madoff Investment Securities, LLC, et al.,

Defendants.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 21, 2011

10:00 AM

B E F O R E:

HON. BURTON R. LIFLAND

U.S. BANKRUPTCY JUDGE

1  
2 MOTION of the Trustee for Entry of an Order Pursuant to Section  
3 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the  
4 Federal Rules of Bankruptcy Procedure Approving an Agreement By  
5 and Between the Trustee and the United States of America on  
6 Behalf of the Internal Revenue Service (Adj. from 12/15/11)  
7 (4544)

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25 Transcribed by: Sara Davis

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A P P E A R A N C E S :  
  
BAKER HOSTETLER LLP  
  
Attorneys for SIPC Trustee  
  
45 Rockefeller Plaza  
  
New York, NY 10111  
  
  
BY: ELYSSA S. KATES, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Be seated, please.

3 THE CLERK: SIPC v. BLMIS.

4 THE COURT: You have to be more specific. Which  
5 matter?

6 THE CLERK: The 9019 motion with the IRS.

7 MS. KATES: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. KATES: Alyssa Kates, Baker & Hostetler on behalf  
10 of the trustee.

11 We are here this morning seeking entry of an order  
12 granting the trustee's motion to approve the settlement  
13 agreement between the trustee, United States of America on  
14 behalf of the IRS, which going forward, I will refer to as the  
15 IRS.

16 The settlement agreement provides in part that the IRS  
17 will remit 326 million dollars to the trustee for the benefit  
18 of BLMIS customers with valid customer claims. The settlement  
19 agreement is in full and final settlement of all payments made  
20 by BLMIS to the IRS.

21 The 326 million dollars is also --

22 THE COURT: Isn't that an overstatement? I don't  
23 think it's all payments to the IRS. It's certain kinds of  
24 payments, isn't that correct?

25 MS. KATES: Yes, Your Honor. It's payments that were

1 withheld by BLMIS purportedly on account of foreign income tax  
2 withholding.

3 The 326 million dollar sum is the vast majority of the  
4 amounts that were paid by BLMIS to the IRS for the six-year  
5 period pre-dating the filing date. The IRS must remit the  
6 payment to the trustee within 180 days of the entry of a final  
7 order or else interest will begin to accrue on the settlement  
8 payment.

9 The trustee, will, after he receives the payment,  
10 credit certain foreign account holders for the amounts of  
11 monies that were purportedly paid on their behalf to the IRS,  
12 to the extent that the trustee receives those monies back.  
13 There were certain foreign account holders who were erroneously  
14 paid refunds by the IRS and their accounts will not be adjusted  
15 because the trustee takes the position that they've already  
16 gotten money back.

17 The trustee will also set aside approximately 103  
18 million dollars for a reserve to satisfy any potential  
19 decisions, settlements or judgments against the IRS or the  
20 trustee with regard to certain excepted claims.

21 The trustee is also seeking the entry of a channeling  
22 injunction. The IRS has made it clear that they will not enter  
23 into this agreement nor will they make the settlement payment  
24 without the channeling injunction. The channeling injunction  
25 will block claims against the IRS and the trustee with certain

1 exceptions. The injunction will not affect the rights of any  
2 foreign account holders that are presently involved in  
3 litigation with the trustee. Customers and creditors that have  
4 filed timely claims will be allowed to continue to pursue  
5 claims against the BLMIS estate or the customer property fund.  
6 If a subsequent order is entered permitting a foreign account  
7 holder to pursue a claim that would otherwise be barred, that  
8 foreign account holder can pursue the claim in the -- against  
9 the trustee in the court. And in addition, if, for any reason,  
10 the IRS is a judge (sic) liable or settles any claims, there is  
11 the reserve which will -- can be used to satisfy those claims.

12 In addition, the motion is largely uncontested. We  
13 have received -- the Court has received only one response and  
14 that is a limited objection by Passafin (ph.) Company.  
15 Passafin's attorney is here in court today, but we have reached  
16 an agreement resolving the objection. Passafin agrees with the  
17 trustee that the money should be brought into the estate. The  
18 nature of their objection was really more in the manner of how  
19 their claim was going to be calculated. And we have agreed to  
20 resolve that issue at the same time that we resolve Passafin's  
21 objection to the -- to the trustee's objection to their claim.

22 We have submitted a revised proposed order along with  
23 our reply which preserves Passafin's rights and the trustee's  
24 rights with regard to the calculation of Passafin's claim. And  
25 that's really the highlights of the settlement agreement, Your

1 Honor.

2 THE COURT: Well, since the settlement agreement has  
3 brought impact on a certain category of investors, and the  
4 issue of a channeling injunction that would affect those  
5 rights, I haven't heard from you with respect to notice of this  
6 and opportunity to be heard.

7 MS. KATES: Well, Your Honor, we sent out notice to  
8 all of the affected foreign account holders. We also sent  
9 notice to parties receiving electronic notice. So the 145  
10 account holders, the parties that would be potentially affected  
11 by this channeling in junction, all received copies of our  
12 motion papers.

13 THE COURT: And you've received only one objection,  
14 is --

15 MS. KATES: Yes.

16 THE COURT: -- that correct?

17 MS. KATES: We received some question which we have  
18 responded to, but no one other than Passafin filed an  
19 objection. And, again, it wasn't an objection to bringing the  
20 asset into the estate; it was more to how their claim was going  
21 to be calculated.

22 THE COURT: Does anyone want to be heard?

23 There's no response. Your presentation indicates that  
24 there's a resolution with respect to the one objectant which  
25 doesn't go to the heart of the settlement, but only goes to a

1 calculation. What I'm concerned about is that the 320-odd  
2 million dollars stood as a resolution of any claims that might  
3 be held by a particular investor. And the channeling  
4 injunction then turns away those rights against the IRS to the  
5 extent the IRS -- as either a stakeholder or direct liability  
6 to those parties, then the fund is now in a different posture.

7 My main concern, and I think it's been satisfied by  
8 the record before me, is that the rights are completely  
9 protected and the avails of the funds continue to exist with  
10 respect to the transmission of the settlement amount and the  
11 reservation of certain portions of it, to resolve any claims  
12 that might exist. Since there is little prejudice to the  
13 potential claimants, the fund, in one form or another, will  
14 continue to exist and satisfaction of claims const -- continues  
15 to be based upon a potential 100 percent recovery.

16 I do find it appropriate to issue the channeling  
17 injunction. I find the settlement certainly -- which is  
18 tantamount to a 98 of 100 percent turnover or recovery in  
19 avails to parties to be appropriate and fair and equitable  
20 under all of the circumstances. And under 9019, certainly, is  
21 well above the lowest rung in a range of reasonableness. And  
22 I'm therefore prepared to enter the requested relief which  
23 includes the injunction. Although I wonder why their sovereign  
24 needs to be protected with an injunction.

25 I think the sovereign ends up protected in other ways,



1 but that's beside the point. If this is what -- the way the  
2 sovereign wants to hear from me, I'd be glad, under these  
3 circumstances, to grant the relief.

4 MS. KATES: Thank you, Your Honor.

5 (Whereupon the requested proceedings were concluded at  
6 10:11 AM)

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I N D E X

RULINGS

	Page	Line
Requested relief, which includes the	8	22
channeling injunction, granted		

C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

Sara  
Davis

Digitally signed by Sara Davis  
DN: cn=Sara Davis, o, ou,  
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SARA DAVIS

AAERT Certified Electronic Transcriber CET\*\*D 567

Veritext

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Mineola, NY 11501

Date: December 22, 2011